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stores oil in stationary tanks and transports the same by tank wagons or in barrels through the streets of the city for the purposes of distribution or delivery to purchasers, is reasonable in its classification of the persons and corporations taxable thereunder, and does not violate the constitutional requirements of uniformity and against discrimination.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, §§ 8, 9.]

MARBACH *v.* HOLMES.

March 1, 1906.

[52 S. E. 828.]

1. Ejectment—Evidence—Title.—Where both parties in ejectment claim the land from a common source, it is unnecessary for either to trace title beyond that source.

2. Adverse Possession—Possession of Purchaser—Disavowal of Vendor's Title.—The possession of a purchaser under an incomplected contract of sale does not become adverse until there is a severance of the relation of vendor and purchaser by a distinct avowal on the purchaser's part that he is holding adversely to the vendor, and notice of such avowal is brought home to the vendor.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Adverse Possession, §§ 343-346.]

3. Ejectment—Adverse Possession—Evidence.—In ejectment, where the defense was adverse possession, the record of a suit for specific performance brought three years before the commencement of the ejectment action by defendant against his alleged vendor, under whom plaintiff claimed, in which suit the bill was dismissed, was admissible to show that defendant's possession was not adverse at that time.

SMOKELESS FUEL CO. *v.* W. E. SEATON & SONS.

March 1, 1906.

[52 S. E. 829.]

1. Contracts—Consideration—Mutual Promises.—Where the consideration for the promise of one party is the promise of the other party, there must be absolute mutuality of engagement, so that each party may have the right to hold the other to a positive agreement.

[Ed. Note.—For cases in point, see vol. 11, Cent. Dig. Contracts, § 345.]

2. Sales—Consideration—Mutuality.—A contract reciting that the first party had sold to the second party from 1,000 to 1,500 tons of coal at a certain price, to be shipped as ordered between the date of

the contract and a certain future date, was supported by a valuable consideration and mutuality of engagement.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, §§ 31, 54-57.]

3. Same—Breach—Excuses for Nonperformance—Burden of Proof.

—In an action for breach of contract to deliver coal, the burden was on defendant to show that it was excused, under strike or car-shortage clauses of the contract, from performing the same.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, § 1170.]

4. Same—Stipulations Excusing Nonperformance—Construction.—

A contract for the sale of coal, which provided that the seller would use every possible effort towards completing the contract, "but that it was subject to strikes * * * beyond the control" of the seller, bound the seller to deliver the coal, unless there was a strike which was so far beyond its control as to render performance impossible.

5. Same—Questions for Jury.—In an action for breach of a contract to deliver coal, whether defendant was prevented from performing its contract by a strike beyond its control, within the meaning of a clause of the contract excusing performance in case of such strikes, held, under the evidence, a question for the jury.

6. Same—Duty to Perform—Right to Impose Conditions.—Where a contract for the sale of coal required the seller to deliver coal at a certain price up to a certain amount, as ordered, the seller was not entitled to demand an indemnifying bond as a condition of delivering the coal after the same had advanced in price on the market, and the buyer was under no obligation to comply with such a demand.

7. Same—Demand of Performance—Question for Jury.—In an action for breach of a contract to deliver coal up to a certain amount, as ordered, whether plaintiff had demanded delivery of the coal, held, under the evidence, a question for the jury.

8. Same—Necessity of Demand.—Where a contract bound defendant to deliver coal to a certain amount, as ordered, it was incumbent on plaintiff to demand the coal as a condition of putting defendant in default for failing to deliver the same.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sales, §§ 357, 1157.]

HARDING *v.* COMMONWEALTH.

March 1, 1906.

[52 S. E. 832.]

1. Intoxicating Liquors—Offenses—Charge of Offense—Sufficiency.

—Under Code 1904, § 4108, providing that an appeal from a judgment of conviction by a justice in certain cases shall be tried without